

UNITED STATES OF AMERICA

~~BEFORE THE NATIONAL LABOR RELATIONS BOARD~~

CAPS CONCRETE CORPORATION

and

Case 1--CA--27730

MASSACHUSETTS LABORERS' DISTRICT COUNCIL

May 13, 1991
DECISION AND ORDER

By Chairman Stephens and Members Donovan and Raudabaugh
Upon a charge filed by the Massachusetts Laborers' District Council, the

Union, on October 23, 1990, the General Counsel of the National Labor Relations Board issued a complaint on November 30, 1990, against Caps Concrete Corporation, the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

On March 1, 1991, the General Counsel filed a Motion to Transfer Proceeding to the Board and for Summary Judgment. On March 5, 1991, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, ''all of the allegations in the complaint shall be deemed to be admitted to be true and shall be so found by the Board.'' Further, the undisputed allegations in the Motion to Transfer Proceeding to the Board and for Summary Judgment disclose that counsel for the General Counsel, by certified letter dated January 30, 1991, notified the Respondent that unless an answer was received by close of business on February 8, 1991, a Motion for Summary Judgment would be filed. A copy of that letter was also sent by regular mail. No answer was received by that date. By certified letter dated February 11, 1991, counsel for the General Counsel notified the Respondent that it was being given one additional opportunity, until the close of business on February 20, 1991, to file an answer, and if no answer was filed by that date a Motion for Summary Judgment would be filed. The Respondent has failed to file an answer.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

Findings of Fact

I. Jurisdiction

The Respondent, a corporation, with an office and place of business in Plainville, Massachusetts, has been engaged in the construction industry building concrete foundations. During the 12 months preceding the issuance of the complaint, the Respondent purchased and received at its Plainville

facility products, goods, and materials valued in excess of \$50,000 directly from points outside the Commonwealth of Massachusetts. During the same 12-month period, the Respondent provided services within the Commonwealth of Massachusetts valued in excess of \$50,000 to employers who are themselves directly engaged in interstate commerce, including Jackson Construction. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

The appropriate unit for purposes of collective bargaining within the meaning of Section 9(b) of the Act includes all employees of the Respondent in the classifications set forth in the collective-bargaining agreement between the Union and the Respondent, effective for the period June 1, 1988, to May 31, 1991, but excluding all other employees, guards, and supervisors as defined in the Act. Since about 1978, and at all times material herein, the Union has been the designated exclusive collective-bargaining representative of the employees in the unit, and at all times material herein the Union has been recognized as such representative by the Respondent. Such recognition has been embodied in successive collective-bargaining agreements, the most recent of which is the 1988--1991 agreement. At all times material herein, the Union, by virtue of Section 9(a) of the Act, has been, and is, the exclusive representative of the employees in the unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment. Since on or about July 20, 1990, the Respondent has failed and refused to make payments to the following fringe benefit funds set out in the 1988--1991 agreement:

- (a) Health and Welfare Fund
- (b) Pension Fund
- (c) Training Trust Fund
- (d) Legal Services Fund
- (e) Annuity Fund

We find that, by the acts and conduct described above, the Respondent has failed and refused, and is failing and refusing, to bargain collectively and in good faith with the representative of its employees, and the Respondent thereby has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

Conclusions of Law

By failing and refusing since July 20, 1990, to make contractually required payments to the Health and Welfare Fund, the Pension Fund, the Training Trust Fund, the Legal Services Fund, and the Annuity Fund, the Respondent has failed and refused, and is failing and refusing to bargain collectively and in good faith with the Union and has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

We shall order the Respondent to comply with the terms of its collective-bargaining agreement with the Union by making the contractually required payments to the Health and Welfare Fund, the Pension Fund, the Training Trust Fund, the Legal Services Fund, and the Annuity Fund, with interest and other

sums applicable.¹ We shall also order the Respondent to make its employees whole for any losses they may have suffered as a result of the Respondent's failure to make the contractually required benefit fund payments in the manner prescribed in Kraft Plumbing & Heating, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981). This shall include reimbursing employees for any contributions they themselves may have made, with interest, for the maintenance of any fund after the Respondent ceased making the benefit fund payments. Concord Metal, 295 NLRB No. 94, slip op. at 8--9 (June 30, 1989). Interest on any money due and owing employees shall be computed in the manner prescribed in New Horizons for the Retarded, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Caps Concrete Corporation, Plainville, Massachusetts, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to comply with the terms of its collective-bargaining agreement with the Union by failing to make contractually required payments to the Health and Welfare Fund, the Pension Fund, the Training Trust Fund, the Legal Services Fund, and the Annuity Fund.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

¹ Because the provisions of employee benefit fund agreements are variable and complex, the Board does not provide at the adjudicatory stage of the proceeding for the addition of interest at a fixed rate on unlawfully withheld fund payments. Any additional amounts owed with respect to the funds will be determined in accordance with the procedure set forth in Merryweather Optical Co., 240 NLRB 1213, 1216 fn. 7 (1979).

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Comply with the collective-bargaining agreement effective by its terms from June 1, 1988, to May 31, 1991, by making the contractually required payments to the Health and Welfare Fund, the Pension Fund, the Training Trust Fund, the Legal Services Fund, and the Annuity Fund.

(b) Make the unit employees whole, with interest, for any loss of benefits they may have suffered because of the Respondent's failure to comply with the terms of its collective-bargaining agreement with the Union, as set forth in the remedy section of this decision.

(c) Post at its facility in Plainville, Massachusetts, copies of the attached notice marked "'Appendix.'"² Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "'POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'" shall read "'POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.'"

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(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. May 13, 1991

James M. Stephens, Chairman

Dennis M. Devaney, Member

John N. Raudabaugh, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail to comply with our collective-bargaining agreement with the Massachusetts Laborers' District Council by failing to make contractually required payments to the Health and Welfare Fund, the Pension Fund, the Training Trust Fund, the Legal Services Fund, and the Annuity Fund.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL comply with the collective-bargaining agreement effective by its terms from June 1, 1988, to May 31, 1991, by making the contractually required payments to the Benefit Funds described above.

WE WILL make our unit employees whole, with interest, for any losses resulting from our failure to make payments to the Benefit Funds pursuant to our collective-bargaining agreement with the Union.

CAPS CONCRETE CORPORATION

(Employer)

Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 10 Causeway Street, Sixth Floor, Boston, Massachusetts 02222-1072, Telephone 617--565--6739.